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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by Centre Europe-Tiers Mond, a non-governmental organization on the Roster, and the working group "NGO-Covenant I" (Human Rights Academy, Forum against Racism, Swiss Protestant Church Federation, Swiss Peace Council)

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1988/4.

[22 September 1998]

GE.98-18332 (E)

NGO report on implementation by Switzerland of the International Covenant on Economic, Social and Cultural Rights

1. The basic criticism to be made of the situation in Switzerland is that economic, social and cultural rights do not have the same status as political and civil rights. This is especially obvious in the proposed amendment to the Federal Constitution, in which "social goals" (not rights) are only mentioned in a single article. Contrary to the commitment of the Federal Tribunal, mentioned in the initial report of Switzerland on the implementation of the Covenant (E/1990/5/Add.33), to the observance of international treaties, in practice less attention is given to the international Covenant on Economic, Social and Cultural Rights (Covenant I) than to the International Covenant on Political and Civil Rights (Covenant II), or to the European Convention on Human Rights. Moreover, the Federal Tribunal refuses to accept that, according to General Comment 3 of 1990 (the nature of the States parties' obligations) of the Committee on Economic, Social and Cultural Rights, certain provisions are directly applicable in national law.

2. With the ratification of Covenant I, Switzerland has committed itself to implement all provisions without discrimination, and to guarantee that every person living in Switzerland has an equal opportunity to enjoy the rights contained in the Covenant (art. 2). This means that Switzerland undertakes to identify especially disadvantaged groups of people and to guarantee to them, through a progressive process of appropriate measures, their rights as mentioned in Covenant I. Not only should the Government take supportive measures against the worsening inequality of opportunities with regard to these rights; it should also work to reduce discrimination in relations between private individuals.

3. In the following we will focus on articles 2 and 3 of Covenant I, with regard to four groups of persons particularly discriminated against in Switzerland: foreigners/migrants, persons with disabilities, women and travellers (Yenish, Roma).

4. Discrimination against foreigners/migrants. As the Swiss report states in paragraph 28, "the right to equality extends not only to Swiss citizens but also to aliens". It adds to this fundamental declaration of principle that "the fact of being an alien may provide objective grounds for a difference in treatment when Swiss nationality plays a cardinal role in the matter to be regulated". However these "objective grounds" for unequal treatment between Swiss people and foreigners are often interpreted so broadly, in law and in practice, that enormous discrimination, having little to do with the needs of a sovereign nation-State, occurs in all areas of rights covered by this Covenant. The discrimination against foreigners which we have observed in labour markets, social security, education, fair and favourable working conditions, protection of the family or appropriate living standards cannot reasonably be justified by "the cardinal role" of Swiss nationality.

5. Discrimination against persons with disabilities. In its General Comment 5 the Committee explicitly addresses the situations confronted by persons with disabilities. It has urged not only a ban on discrimination, but also positive measures towards achieving equal opportunities for these persons. Ratification of Covenant I requires that persons with disabilities receive constitutional protection against discrimination, and also in this positive sense. Regulations calling for equal treatment demonstrate that

banning discrimination is not sufficient to provide equal opportunities to persons with disabilities, since they do not take into account the special needs of these persons. Examples are access to public buildings, private institutions or public information, or the involvement of persons with disabilities in planning and implementing of public projects. The participation of persons with disabilities in government committees and planning groups is therefore very important, to ensure that their specific interests are respected in all public projects.

6. Discrimination against women. The principle that equal opportunity cannot be achieved merely by banning discrimination applies to all disadvantaged groups, including women. We have observed discrimination against women in all areas of Covenant I. Women continue to be almost alone in taking charge of the unpaid tasks of family and social work. They receive little support for access to an equal share in the labour market (see paras. 123-125). The most striking example is maternity insurance, which had to wait 53 years after its inclusion in the Federal Constitution to be implemented by a federal law, the actual formulation of which is still uncertain. Availability of child care services is still very insufficient, and private organizations do not have the means to pay well for child care. There is a significant attitude of reserve towards creating part-time jobs for men. The Federal law concerning equality between men and women (para. 51) needs to be complemented by positive measures in the labour market in favour of women. We have observed that the institutions which are charged with implementing equality between men and women do not have enough personnel and financial resources. Not only have offices for equality been closed in some cantons (para. 55), but these offices, especially Federal ones, have a vast mandate but only a minimal staff. The same goes for women's NGOs which contribute with their know-how and networking to achieve the goal of equal opportunity. They get no public subsidies or very little, which inevitably leads to people having to work under constant stress. According to a recent study (René Levy, 1998: Social Stratification in Switzerland), measures should be taken beginning at primary school level to increase career opportunities for girls, as well as to combat still existing prejudices and clichés with regard to their role in society.

7. Discrimination against travellers ("Gypsies"). Two Swiss minority groups are very often subject to discrimination: the Yenish and Roma peoples. Above all the travelling Yenish and Roma peoples have difficulties gaining their rights to housing and work. In order to practise their cultural way of life they need transitory and long-term camping places. Unfortunately, these only exist in small numbers. As many of these campsites are not public property, access depends on the goodwill of the private owners. Swiss patent law makes it difficult for travellers to earn their living in their freely chosen way. The patent law is administered by the cantons, and as such grants the right to work only within the borders of a particular canton, and it does not obligate the cantons to grant commercial licences to travellers. This makes it difficult or impossible for them to work in their "traditional" way. Also, the school system does not offer the travellers any programme that allows for their way of life. Their children can only rarely attend school during a whole school year.

8. In summary, one can say that the Swiss authorities should definitely be more active and show more courage in implementing the rights established in Covenant I and also work more actively together with the NGOs in Switzerland.